

STATE OF TENNESSEE

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December 1, 1999

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

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DEC - 2 1999

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Re: CC Docket No. 99-301 "Local Competition and Broadband Reporting."

Dear Secretary Salas:

Enclosed is an original and 4 copies of the written comments of the Office of the Attorney General, State of Tennessee, regarding the above-named docket. Copies of the written filing and diskette copies are also being sent to the Commission's staff as required.

Sincerely,

E. Vincent Williams

c: Ms. Terry Conway, Common Carrier Bureau, Industry Analysis Division
Mr. Andre Wise, Cable Services Bureau, Policy and Rules Division
Mr. Jerome Stanshine, Office of Engineering and Technology
Mr. Walter Strack, Wireless Telecommunications Bureau

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC - 2 1999
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In the Matter of)	
)	
Local Competition and)	
Broadband Reporting)	CC Docket 99-301
)	

Comments of the
Office of the Attorney General
State of Tennessee
Consumer Advocate Division
December 1, 1999

SUMMARY

The Office of the Attorney General and Reporter for the State of Tennessee (OAG), pursuant to the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("FCC" or "Commission") on October 22, 1999, hereby submits these comments for consideration in the Local Competition and Broadband Reporting docket. On behalf of the OAG, its Consumer Advocate Division (CAD) is charged with commenting on the proposed rules which seek to implement certain portions of the Telecommunications Act of 1996 ("1996 Act").

The OAG comments on two areas that relate directly to each other. First, we comment on the Commission's interest in acquiring data for geographic areas smaller than a state, discussed in the NPRM at Par. 70. Second, we comment on the proposal to exempt from local competition and broadband-reporting any entity which has less than 1,000 full broadband lines or less than 50,000 telephone lines to all customers or less than 50,000 telephony subscribers (hereinafter referred to as a small company).

We agree that the FCC should collect data for geographic areas smaller than a state and that the reporting procedures should include data representing rural and low income communities. We disagree with the proposed exemption to reporting because it appears contrary to a reporting process which covers all Americans and, therefore, contrary to law. We also disagree because such reporting is not a burden on those providers; and because the exemption creates a blindspot in the sense that without data, the Commission would not know if these communities of subscribers are being

underserved. Instead of granting an exemption which appears inconsistent with law, the OAG recommends the implementation of two reporting cycles, one for small companies and one for all other companies. Small companies would file reports every two years while all other companies would file reports semi-annually to rapidly inform federal and state policy makers about the deployment of broadband facilities.

1. DATA FOR GEOGRAPHIC AREAS SMALLER THAN A STATE

The Interests of the States and Consumers.

OAG concurs with the Commission's conclusion at Par. 70 of the NPRM, where the Commission states that data reporting on a state-by-state basis is too crude to measure broadband deployment in certain areas:

"We tentatively conclude that each reporting company will, at a minimum, supply data on a state-by-state basis. We note, however, that rural and low-income areas are areas that some observers believe will not receive full broadband service through the operation of a competitive market...We seek comment on...whether it might be appropriate to require responding companies to supply information that would indicate the number of customers they have in smaller geographic areas within a state."

Tennessee has a significant number of consumers in rural and low-income areas. We agree with the "observers" that these consumers are at risk with regard to the development of local competition and the timely deployment of full broadband service in their communities. Therefore, it is necessary to require responding companies to supply information which indicate the broadband deployment in smaller geographic areas within a state.

The OAG believes it is necessary for companies to supply information in

sufficient detail to allow for intrastate comparisons of local competition and broadband deployment rates. Intrastate comparisons are necessary because of the duty charged to states by the Telecommunications Act, 110 Stat. 56, section 706. The Act states that:

“...each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms)...”

The OAG believes that if Congress intended to direct states to encourage deployment on a reasonably and timely basis, Congress also intended to provide the states with sufficient, relevant information, to inform state decision makers. Information allowing intrastate comparisons is implicitly compelled by the law and will be of enormous value to governors, state legislatures, state commissions and local franchising authorities. Company reporting should allow for intrastate comparisons by county and preferably by zip code. Zip code reporting would disclose whether deployment to low income areas is a substantial problem. With this information state authorities would know what areas in a state would be leading and lagging regarding the deployment of broadband services. Governors, state legislatures, state commissions and local franchising authorities will be able to target resources based upon the information. All 50 states would be well served if the Commission were to fashion its reporting procedures to allow for intrastate comparisons, thereby avoiding the need for all states to develop duplicative and perhaps inconsistent broadband reporting procedures.

Furthermore, OAG believes it is an open question whether the states could order

such procedures because of the Commission's decision earlier this year, when it declared its jurisdiction over calls to the Internet. Broadband facilities are the principal means to implement electronic commerce over the Internet. Access to the Internet is a significant method of broadband competition between service providers. Therefore, the Commission's declaration of jurisdiction over the Internet could be a basis for service providers to litigate the states' enforcement of their own broadband and local competition reporting procedures. However, this proposition need not be tested if the Commission's reporting procedures allow for intrastate comparisons.

Proposed Bases of Intrastate Comparisons.

Now, and in the foreseeable future, deployment of broadband services will be synonymous with the deployment of Digital Subscriber Line Access Multiplexers (DSLAMs). Therefore, intrastate comparisons will be greatly facilitated if the basic unit of broadband reporting is the DSLAM. This reporting procedure will not be burdensome for providers because DSLAM deployment is in its infancy. At the same time DSLAMs are being installed, the service providers will be in the position of being able to record pertinent data for DSLAMs, such as county and zip code, to identify their geographic location, and the number of consumers served by the DSLAM, where the consumers are grouped by zip code or county.

This grouping is no burden because the providers already have this information to render bills to the customer. OAG believes this information would be useful to the Commission as well as to the states while not duplicating any other reporting procedures

carried on by any agency in the entire country.

Intrastate Comparisons Must Yield Information on Rural and Low-income Areas.

Since intrastate comparisons are genuinely needed by the states, and given the danger that “rural and low-income areas...will not receive full broadband service,” OAG believes the Commission’s proposal to exempt certain providers of telecommunications services¹ is ironic and counterproductive. Commissioner Tristani has stated that: “Increasingly broadband deployment is becoming a top priority in Washington as we seek to ensure that the benefits of the communications and information revolution extend to all parts of America.”² Thus, at the same time Congress and the FCC are seeking to ensure the extension of the communications revolution to all parts of America, the proposed exemption would undercut the objective by failing to secure information in the precise locales where reporting is most needed. The OAG believes complete reporting is a necessary component to the process of ensuring that the benefits of the communications revolution extend to all parts of America.

2. REPORTING EXEMPTION NOT IN THE PUBLIC INTEREST

The OAG further comments that the reporting exemption for small companies be removed because it is inconsistent with or contrary to Section 706 of the 1996 Telecommunications Act. The Commission accurately stated at Par. 64 that its “interest in broadband services generally stems from section 706 of the 1996 Act which directs us

¹Those with less than 50,000 lines.

²Remarks of Commissioner Tristani, November 10, 1999 in Albuquerque, New Mexico.

to determine whether full broadband services...are being deployed in a reasonable and timely fashion to all Americans.” The proposed reporting exemption, however, changes the deployment determination from one considering all Americans to a determination of deployment to some Americans. The phrase “all Americans” surely includes customers of service providers who fit the proposed exemption’s terms, including incumbent providers. The exemption is also inappropriate because some new service providers may never exceed the required numeric threshold for reporting.

In Tennessee alone the proposed reporting exemption would permanently eliminate deployment information on 21 service providers and more than 275,000 subscribers, most of them rural households, as well as rural elementary and secondary schools. Withdrawing the exemption permits the Commission and the states to make deployment determinations with respect to rural schools and households.

The OAG further notes the Commission’s concern about “bandwidth famine³” in rural areas and shares that concern. Therefore, OAG believes the public interest is well served by reporting that fully includes rural consumers and low-income areas to verify that competition and broadband deployment to rural consumers keeps pace with the deployment rates to urban consumers and to verify that low-income areas are not underserved. Without verification at the federal level, states may be forced to initiate procedures that duplicate the Commission’s efforts, a burden for the states and for service providers.

³Par. 70.

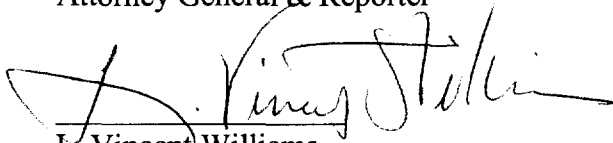
The Commission asks if its reporting procedures will be burdensome for providers with comparatively few customers. The OAG believes this concern is addressed by reducing the frequency of reporting by small companies. Par. 34 of the NPRM asks for comments on whether “quarterly, semi-annual, or annual reporting would best serve the goals of this data collection program.” The OAG recommends that small companies file reports every two years. All other companies would file reports semi-annually because this frequency more rapidly informs federal and state policy makers about the deployment of broadband facilities. The reporting is not a burden to service providers because they already have procedures for reporting certain customer-related data to a state regulatory authority and/or to the Rural Utilities Services of the United States Department of Agriculture. In addition, the incumbents are likely to have good command of customer-related information because for years they have enjoyed the benefit of having clearly delineated service territories created by a state regulatory commissions or municipal authorities. Finally, the DSLAM technology is so new and mechanized that implementing a reporting procedure at the time of initial deployment can not be a burden.

CONCLUSION

In summary, the OAG urges the Commission to adopt local competition and broadband reporting procedures where all providers report; where the supplied information allows for intrastate comparisons by county or zip code so that rural and low income areas are monitored and where the basic unit of measure is the DSLAM because it provides for simpler reporting and is synonymous with broadband access.

Respectfully Submitted,

Paul G. Summers
Attorney General & Reporter

A handwritten signature in black ink, appearing to read "L. Vincent Williams", is written over a horizontal line.

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